

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Xiaochun Zhu on January 28, 2010.

The application has been amended as follows:

Claims 3, 4, 10, 11, 20, 21, 39, 42 and 43 are cancelled.

In claims 2, 6 and 7, the first word "An" is replaced with "The".

In claims 9, 13, 14, 15, 16, 19, 23, 24, 25 and 26, the first word "A" is replaced with "The".

Claim 1. (Currently Amended) An isolated nucleic acid molecule encoding a polypeptide comprising the amino acid sequence as set forth in SEQ ID NO: 2, ~~wherein said polypeptide is present in plant zygotic embryos or embryogenic callus and is substantially not present in non-embryogenic tissue and wherein said nucleic acid permits discrimination of plant tissue at different developmental stages.~~

Claim 8. (Currently Amended) A genetic construct comprising a nucleic acid molecule encoding a polypeptide comprising the amino acid sequence as set forth in SEQ ID NO: 2; ~~wherein said polypeptide is present in plant zygotic embryos or embryogenic callus and is substantially not present in non-embryogenic tissue and wherein said nucleic acid permits discrimination of plant tissue at different developmental stages.~~

Claim 17. (Currently Amended) A vector comprising ~~[[a]]~~ the construct of any one of Claims ~~[[8-10]]~~ 8-9 or 13-14.

18. (Currently Amended) A host cell comprising ~~[[a]]~~ an isolated nucleic acid molecule encoding a polypeptide comprising the amino acid sequence as set forth in SEQ ID NO: 2, ~~wherein the isolated nucleic acid molecule is introduced into the host cell wherein said polypeptide is present in plant zygotic embryos or embryogenic callus and is substantially not present in non-embryogenic tissue and wherein said nucleic acid permits discrimination of plant tissue at different developmental stages.~~

Claim 37. (Currently amended) ~~A~~ The method of Claim 34, wherein said nucleic acid molecule comprises ~~[[a]]~~ the sequence of nucleotides ~~substantially~~ as set forth in SEQ ID NO: 1.

Claim 38. (Currently amended) ~~A~~ The method of Claim 34, wherein said nucleic acid molecule comprises ~~[[a]] the~~ sequence of nucleotides ~~substantially~~ as set forth in SEQ ID NO: 3.

Claim 45. (Currently amended) A method for detecting embryogenic plant material, said method comprising immobilizing a sample ~~putatively~~ containing RNA from the material to be screened on a solid support and contacting said immobilized ~~RNA~~ sample with a ~~labelled~~ labeled nucleic acid molecule which comprises the nucleotide sequence set forth in SEQ ID NO: 1 or SEQ ID NO: 3, and then detecting the presence of said label.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (571) 272-0794. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access

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/Cynthia Collins/  
Primary Examiner, Art Unit 1638

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